Supreme Court, U.S.
FILED

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DOCKET NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

In re: STANLEY E. KORNAFEL

Petitioner,

ON PETITION FOR AN EXTRAORDINARY WRIT

Extraordinary Writ of Mandamus

STANLEY E. KORNAFEL, Pro Se

668 Mohawk Avenue

Norwood, PA 19074

(610) 522 - 0533

47 pp

QUESTIONS PRESENTED

A) The U.S. Government Postal Service sent a representative to an automobile accident scene where said representative acknowledged the U.S. Postal Service as the sole proximate cause and fault of accident with full negligence.

Postal representative negotiated damages, established limitations and agreed to full repairs by making full compensation for damages within three (3) weeks of submitting damage proposals.

Representative assured Plaintiff of his responsibility to compromise and his total authority as the last word with no other person or authority to address.

Was Petitioner correct in honoring Representative as authority and this as a settlement and agreement or was this misrepresentation?

B) Where Postal Agency, receiving claim, refused repair proposals, suppressed Petitioner's supporting documents "without refute," negated its own adjuster's error, used incomplete information, refused to make repairs and refused to honor commitment made by its representative, is this ethical fairness within 1st, 4th and 5th Amends, 9 USCS 10, 28 USC 2071 and 2674 or force under color of law. 42 USC 1983?

c) The tort fee allotment of 20% made such fee so minimal that Petitioner was denied legal representation.

Had Petitioner obtained an attorney tort law mandates fees be paid from settlement which further entrapped Petitioner and would prevent Petitioner from being made whole.

Is not a citizen's monies his personal property?

Petitioner did not know and was never advised of tort law or legal fees limitations until after Agency acknowledged receipt of claim and after reneging on its agreement and promise.

Under Constitution Article 1 Sec. 9 "that no bill of attainder shall be passed" and 9 USCS 10 "undue means" is such entrapment constitutionally ethical and judicially fair?

As Government is without restraints does this not violate Petitioner's 1st, 4th, 5th, 9th, 10th and 14th Amends. Rights?

D) Where Pro se Petitioner brought suit in local court and served Postal employee, driver of striking vehicle and where U.S. Government removed action to federal level and court ordered answer within 60 days.

Where Pro se Petitioner awaiting response by Respondent to court order, denied representation and jury trial was met after elapsed time with dismissal for lack of service.

Was government's disobeying direct court order, plus not answering claim entrapping Petitioner and court's discriminately not requiring Respondent to answer claim ethically correct and judicially consistent even after Petitioner noted in reconsideration to comply on service?

E) 1. Where Petitioner was pro se; and,
2. Breach of promise and bad faith existed; and,
3. Petitioner refused jury trial; and,
4. Court refused to require government to answer claims as presented, issued order quoting partial phrase of government's false misleading statement; and,
5. Reduced civil action to administrative claim originally denied;
6. Is collusion or extortion present?

Is procedure constitutionally and ethically correct under 1st, 4th, 5th, 7th 9th, 10th and 14th Amends?

PARTIES TO JUDGEMENT SOUGHT

U. S. Government
U. S. Attorney
615 Chestnut St. Suite 1250
Phila., PA 19106-4476

U. S. Postal Service
475 L'Enfant Plaza S.W.
Washington, DC 20260-1136

U.S. of America, et al
Solictor General of the U.S.
Dept. of Justice, Room 5614
10th St & Constitution Ave. N.W.
Washington, DC 20530

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CITATIONS OF OFFICIAL ORDERS AND REPORTS

(NONE PUBLISHED)
-In Reverse Chronological Order-

Feb. 26, 1997 U.S. District Court Eastern District Penna. No. 96 CV 7436 - Order: Defendants motion granted.
Plaintiff's complaint dismissed.
Barred by: Doctrine of Res Judicata,
Statute of Limitations,
Doctrine of Sovereign Immunity.
Defendants not sueable under 42 USC 1983

Jan. 22, 1997 U.S. District Court
96 CV 7436 Order to extend time for Plaintiff's response granted.

Jan. 20, 1997 U.S. District Court
96 CV 7436- Motion by Plaintiff for:
Part 1) Defined statement of clarity on issues mentioned denied.
Part 2) Complete copy of Defendant's Motion to Dismiss granted.

Aug 20, 1996 U.S. Court of Appeals for Third Circuit CIV No. 96 - 1135:
Petition for Rehearing - Denied

Aug 8, 1996 U.S. Court of Appeals
CV 96 1135 Order: Appellants Motion for Recusal of Judges of Record - Denied.

July 16, 1996 U.S. Court of Appeals
CV 96 1135 Order:
Appellant's Motion for Stay for Consideration of Incomplete Statements. Deputy Clerk's conversation with U.S. Attorney: Does not plan to respond to above motion unless Court should so direct. Motion Denied.

July 8, 1996 U.S. Court of Appeals
CV 96 1135 - Order: Appellant's Motion to Clarify Court's Order - Denied.

June 18, 1996 U.S. Court of Appeals
CV 96 1135 Judgement Order: Order of District Court Jan 24, 1996 Affirmed.

June 4, 1996 U.S. Court of Appeals
CV 96 1135 Order: Appellant's Motion to Expand Record - Denied.

May 9, 1996 U.S. Court of Appeals
CV 96 1135 Order: Appellees Motion to File Supplemental Appendix - Granted

Jan 24, 1996 U.S. Dist. Court East Penna
No. 95 CV 6670 Order: Defendants Motion of Dismissal Granted and Plaintiff's Complaint Dismissed for reason set forth in government's memorandum of law that it will pay Plaintiff amount claimed by Plaintiff in Administrative Claim Form.

July 14, 1995 U.S. Dist. Court East Penna
No. 94 CV 1361 Order: Action dismissed pursuant to agreement with council.

June 13, 1995 U.S. Dist. Court East Penna No. 94 CV 1361 Notice - Trial Listed for July 17, 1995 before Judge.

Oct 12, 1994 U.S. Dist. Court East Penna No. CV 94 1361 From U.S. Attorney: through legal council stipulation for compromise settlement.

July 25, 1994 U.S. Dist. Court East Penna No. 94 CV 1361 Order: Matter dismissed without prejudice pursuant Rule 4 (J).

Aug 6, 1993 U.S. District Court for East. Dist. Penna No. 92 CV 5421 - Plaintiff's Motion for Reconsideration of Court's June 3, 1993 order - Denied

July 27, 1993 No. 92 CV 5421 Memorandum by Defendant for Motion to Dismiss

July 9, 1993 No. 92 CV 5421 Order: Upon Plaintiff's request for reconsideration government to submit brief addressing:
1) Does service on the original Defendant put U.S. on notice since it stepped into shoes of Defendant?
2) Is rule sufficiently complex considering Plaintiff is pro se as constitute good cause for failing to meet requirements of FRCP Rule 4 (J).

July 7, 1993 No. 92 CV 5421 Defendant's response to Motion for Reconsideration.

June 16, 1993 No. 92 CV 5421 Plaintiff's Motion for Reconsideration

June 7, 1993 No. 92 CV 5421 Order. If Plaintiff wishes to pursue claim, he should commence new action. Plaintiff's motion dismissed without prejudice. Defendants Motion to Dismiss Granted.

April 19, 1993 U.S. Dist. Court East Penna No. 93 CV 5421 Motion by Plaintiff for default judgement and response to Defendant's Motion to Dismiss on lack of service.

March 19, 1993 U.S. Dist. Court East Penna No. 92 CV 5421 Order: Unless Plaintiff files response to Defendant court will dismiss case.

March 1, 1993 U.S. Dist. Court East Penna No. 92 CV 5421 Demand for jury trial by Plaintiff

Feb 23, 1993 U.S. Dist. Court East Penna. No. 92 CV 5421 Defendant's Motion to Dismiss

Oct 23, 1992 U.S. Dist. Court East Penna No. 92 CV 5421 Order: United States substituted as sole Defendant. U.S. to have 60 days to answer complaint.

Oct 1, 1992 U.S. Dist. Court East Penna No. 92 CV 5421: Defendant's Motion for U.S. substituted as Defendant

Sept 21, 1992 U.S. Dist. Court East Penna No. 92 CV 5421 Defendant's Motion to Dismiss and substitute U.S. as Defendant stating U.S. had removed action from Regional court to U.S. Dist. Court.

Aug 18, 1992 Regional court: Civil Complaint CV A 1406 92 for $1,001.20

Jun 4, 1992 U.S. Postal Service - Letter for settlement with check for $400.00

May 11, 1992 U.S. Postal Service - Letter acknowledging receipt of appeal letter.

Apr 28, 1992 U.S. Postal Service - Letter: repair costs considered unreasonable if $400.00 offer is refused claim is denied.

Apr 16, 1992 U.S. Postal Service - Letter of receipt of claim form and damage proposals for $973.00.

BASIS FOR JURISDICTION

Article 3 Section 2 - Supreme Court shall have original and appellate jurisdiction in law and fact.

28 USC 1651 A and B - The Supreme Court shall have power to issue writs of mandamus in cases warranted by principles and usage of law.

The United States Court of Appeals sanction of such a departure by a lower court and conflicting with other decisions calls for an exercise of this Court's supervisory powers, and granting of the Writ will be in aid of this court's appellate jurisdiction.

Court of first instance:
U.S. District Court for East. Dist. Penna.
Order entry date Jan. 24, 1996

CONSTITUTIONAL STATUTES AND REGULATIONS

Preamble: Insure domestic tranquility & establish justice Pgs: 22, 24

Article 1 Sect 8 Cl 9 - Constitute inferior tribunals Pg: 30

Article 1 Sect 9 No bill of Attainder Pgs: ii, 19, 22

Article 3 Sect 2 - Supreme Court - Orig. and appellate juris. Pgs: 5, 14, 24, 30

Article 6 Clause 2 - Constitution supreme law of land Pgs: 14, 24, 30

1st Amend. Petition Government for redress Pgs: i, ii, iii, 17, 22, 25, 26

4th Amend. People secure in property Pgs: i, ii, iii, 14, 15, 17, 19, 22, 24, 25, 27

5th Amend. Due Process, Illegal Conduct Pgs: i, ii, iii, 15, 17, 19, 22, 25, 27

7th Amend. Trial by jury Pgs: iii, 14, 22, 24, 25

9th Amend. Rights not to be disparaged Pgs: ii, iii, 15, 19, 22, 25, 27

10th Amend. No depriving equal protection Pgs: ii, iii, 15, 19, 22, 25, 27

14th Amend. No abridging equal protection Pgs: ii,iii,14, 15, 19, 22, 24, 25, 27, 29

9 USCS 10 Undue means and fraud
Pgs: i, ii, 14, 17, 22, 25

28 USC 1332 Diversity jurisdiction
Pgs: 13, 23

28 USCS 1339 Dist. Court jurisdiction to
Postal Service Pgs: 13, 23

28 USC 1342 Civil Rights
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28 USC 1343 Redress deprivation rights
Pgs: 15, 22, 25, 27

28 USC 1346 U.S. as Defend. negligence
in conduct Pgs: 11, 20, 22, 25

28 USC 1402 U.S. is Defend. Pgs: 13, 23

28 USC 1651 Supreme Court Juris. Pg: 5

28 USCS 2071 Ethics consistency
Pgs: i, 22, 24

28 USCS 2075 Substantive rights process
Pgs: 22, 24

28 USC 2255 Correct denial of rights
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28 USCA 2401 Limitation Statute v. U.S.
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28 USC 2412 Prevailing Civil v. U.S.
requires fees Pgs: 15, 24, 25, 27

28 USCS 2672 Admin. adjustment of claims
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28 USC 2674	U.S. liable as individual	Pgs: i, 10, 16, 24
28 USCA 2675	Sovrgn Immu	Pgs: 9, 16
28 USCS 2678	Tort Law	Pgs: 11, 20
28 USCA 2679	Tort Law	Pgs. 11, 20
41 USCA 106	Public contracts	Pgs: 17, 22
42 USC 1983	Under Color of Law	Pgs: i, 1, 14, 15, 17, 19, 22, 24, 25, 27, 29
42 USCA 1985	Civil Rights	Pg. 18
FRCP Rule 4	Commencement	Pg: 3
FRCP Rule 8	Answering Complaint	Pgs: 11, 20, 22
FRCP Rule 9	Fraud or mistake	Pgs: 14, 20, 22, 24
FRCP Rule 12	Answering time	Pgs: 11, 20, 22
FRCP Rule 38	Trial of right	Pgs: 14, 22, 24
FRCP Rule 55	Default	Pgs: 11, 20
FRCP Rule 60	Judgement relief	Pgs: 11, 14, 20, 24
5 RCL 604 liability	Negligence of duty creates	Pgs: 17, 19

STATEMENT OF CASE

Petitioner's vehicle, a 1971 Datsun, was struck broadside by a U.S. Postal Service vehicle on March 11, 1992 without warning and with full proximate cause and negligence.

Post Office Superintendent and police arrived at scene where Postal Supervisor, presenting business card and denoting his word as final and last person of authority of the decision to speak with inspected property, discussed its age and confirmed he understood refurbishing and rebuilding.

Postal Supervisor took photographs, noted property's "good condition for its age," acknowledged total fault and complete negligence and agreed to make full repairs. Supervisor established painting limitations and noted understanding that painting could not be performed until major repairs were completed.

Petitioner, with assurance of full payment within two (2) to three (3) weeks, as directed by Postal Supervisor submitted two (2) proposals of $973.00 with claim form, complying with 28 USC 2401 and 2675.

After receiving receipt of claim, Petitioner received letter of April 28, 1992 from Agency stating $400.00 as their final offer and any rejection would result in denial of the claim.

Agency would not recognize vehicle was repairable and operationally sound. plus would not recognize supporting relevant condition and fact that property was not for sale prior.

Agency refused documents and letters from: insurance agent, Congress person, and professional mechanics on maintenance, plus disregarded value to Petitioner as antique being refurbished and Agency sought to have property junked as only interest was monetary offer.

As claim had been filed and processed Petitioner was prevented legal and equal representation due to unreasonably low Attorney's fee limit under tort law.

As compromise on damages was agreed to prior to filing claim and tort law requires legal fees be extracted from settlement Plaintiff was trapped - either no representation or not be made whole.

28 USCS 2674 Liability of United States (35) Damage law of state where accident occurred is applicable in Federal Tort Claims Act. case.

Had civilian caused damages all repairs would have been made.

Had insurer been commercial, claim would have been paid.

Respondent's bad faith, breaking contract, suppressing documents, forcing insufficient and erroneous information and seeking avoidance of full obligation resulted in Plaintiff accruing court costs, legal fees and loss of monies.

Consulting several local magistrates, Petitioner, on August 18, 1992, as advised, filed suit in local court against driver seeking amount of original claim plus inflation and costs - $1,003.00.

Respondent in Oct 1992 replaced driver as Defendant and removed case to U.S. District Court CV 92 - 5421. Respondent did not answer claims as presented, did not offer restitution and directly disobeyed court order to answer in 60 days entrapping Petitioner. [App-5]

Under duress and turmoil Petitioner filed response Feb 25, 1993 for jury trial under 28 USCA 1346, 2678 and 2679 and default as Respondent had not replied within FRCP Rules 8, 12, 55 and 60.

Petitioner Pro Se on April 19, 1993, seeking fairness, filed for Default of Court's Order October 23, 1992 that U.S. had 60 days to answer Complaint under FRCP Rule 12 and 55. [App-5]

Included: Response to Dismiss Motion. Based on U.S. substituting self as Defendant, was after completed service on original Defendant and removing case to Federal on own merits received service and was served.

Noted: Defendant did not answer nor defend claims as made

Where to continue Petitioner noted would comply on service by sending copies to all parties.

Included was statement of facts of case.

Petitioner's demand for jury denied, representation prevented and claim denied
Petitioner was further injured by collusive administrative entrapment
Preamble: Insure domestic tranquility and establish justice

Pro Se Petitioner under confusion and duress but still seeking court's protection and fairness filed for reconsideration June 16, 1993.
Noted was:
A) Order of Oct. 23, 1992 stating Defendant had 60 days to answer Complaint
B) As original Defendant was served under local court instructions Petitioner was under premise Defendant had been served.
C) Petitioner was awaiting Respondents to answer claim.

As initial major repairs agreed upon by Respondent were not performed and Petitioner was prevented from making finish repairs, unaware of and unknown increased damage ensued preventing state inspection and loss of property at years end 1993.

Loss of attachment would not have occurred but for Respondent's suppression and not making compromised repairs as agreed and promised, resulting in unforeseen lapsing of time and unforeseen bad faith, turmoil, duress and disorientation of Petitioner.

Court, failing to have Respondent answer claims as presented and denying jury trial with representation prevented, entrapped Petitioner and with Respondent failing to make repairs caused additional loss of monies and financial burdens.

Petitioner, paying additional costs, February 29, 1994 filed on new grounds and added damages through attorney in District Court 94 CV - 1361 under 28 USC 1332 and 1339 and 1402 seeking jury trial, damages, fees, costs and fair relief.

Respondent increased offers minimally and finally issued Oct 12, 1994 stipulation for settlement to be original Administrative Claim they had aborted prior to court actions, but refused to pay costs, plus refused to negotiate: fees, monetary losses or loss of property and attachment, thus denying fair relief and preventing Petitioner from being made whole. [App-4]

Notified of hearing without jury but with same judge as in prior case Respondent was advised of government threat "that government will have case thrown out if not accepted "as is" did so cause Petitioner's reflection of Respondent's prior actions and remove Petitioner's good faith and trust in representing attorney, the court and government, that Petitioner depressed, trapped, disoriented and in distress could not proceed.

Petitioner, coercively entrapped under color of law, filed pro se October 19, 1995 for relief in U.S. District Court 95 CV - 6670 for jury trial under Preamble and the Constitution Article 3 Sect 2 and Article 6 Sect 2 also Amendments: 4, 7 and 14 plus 42 USCS 1983 and 28 USC 2255.

Petitioner again denied fair and due process as jury trial denied and Respondent neither denied nor answered claims as presented and court did not require Respondent to answer claims, plus evidence and facts not discussed.

Petitioner was violated by court's biased inaction of Article 6 and FRCP Rules 9, 38 and 60B, plus 9 USCS 10 while its order reduced action to Administrative Claim originally denied by Respondent.

Based on order of January 24, 1996 Petitioner filed Pro Se in U.S. Court of Appeals for Third Circuit CV96 - 1135 under fundamental that ordering amount to be that of original Administrative Claim and by extracting and quoting partial statement of government's memorandum which was false and also misleading as basis for and order was unfair, suppression and collusion. [App-2]

Petitioner's motions to:
Expand Record June 4, 1996 -- Denied
Explanation of order July 8 -- Denied,

Stay for consideration of misleading statements July 16 -- Denied [App-3]

Pro se Petitioner filed for rehearing in banc-- Denied

Where Petitioner was removed from due, equal and fair process preventing adequate and true relief and denying being made whole under color of law without justification nor reason, Petitioner Oct 25, 1996 filed new action pro se in U.S. Dist Court 96 CV 7436 on added and new damages for violations of Amends. 4, 5, 9, 10 & 14 plus 28 USC 1343 and 2412, and 42 USC 1983.

Jury Trial Denied - Court did not require Respondent to answer claims as presented, ignored facts and evidence yet Complaint was dismissed. [App-1]

Respondent claimed immunity where immunity had been waived by acting on original claim.

Fact: Respondent prior to stipulation of Oct 1994 never offered full Administrative Claim amount.

ARGUMENT

Petitioner relied solely on good faith of Postal Representative, J. Michael DePompeo, Superintendent, compromised damages in good faith, made agreement and, as instructed by Postal Representative, filed claim with damage proposals.
28 USCS 2672

Respondent, after receiving claim and proposals of $973.00, did impose adjustors error, used incomplete information and negated Petitioner's support documents "without refute" stating their offer of $400.00 and also to junk property as their final offer and any rejection would result in denial of claim. [App-6]
Complied with 28 USCA 2401 and waived immunity 28 USCA 2675

This was excessive use of force of office and as
A) had civilian caused damages all repairs would have been made;
B) had insurer been commercial, claim would have been paid or repairs made.

28 USCS 2674 states "Liability of United States (35) Damage Law of state where accident occurred is applicable in Federal Tort Claims Act case.

In: Sarft v. Haisfield Ford Inc.
"Measure of damages to automobile not damaged beyond repair is cost of repairs or difference in value before damage and after repair plus cost of repair."
178 A2d 791 179 PA Super 447

In: Williams-Bowman Rubber v. Indus. Maintenance Co.
"Under Illinois law if real property is partially injured and may be repaired in a practical manner then the proper measure of damages is the cost of restoring the property to its condition prior to the injury." 677 F.Supp 539

Respondent, being sole proximate cause of negligence and all damages plus breaking agreement and with force of office, refused support documents and refused to make repairs [App 6 & 7] and

As Petitioner accepted repair limitations as negotiated and so claimed damages within same limits, Respondent's refusal to recognize vehicle was operational and repairable and was not for sale prior, plus disregarded value to Petitioner as antique being refurbished plus refused to honor agreement and sought to have property junked was bad faith with force through use of office and resulting in their inadequate monetary offer being oppressive and unethically unfair.

Directly violating 9 USCS 10, 41 USCS 106, 28USC 1342, 43 USC 1983 and 5 RCL 604 plus breaching Petitioner's protection under preamble to insure domestic tranquility and establish justice in compromising Petitioner's rights under Const. Amends. 1, 4 and 5.

Courts do not favor such behavior as In: Nationwide Motor Assn. of Mich. v. Nationwide Motorist Assn.
"Conspiracy to deprive of whole is false misrepresentation." 273 F.Supp 875

Also In: DeRochement v. U.S.
"Essence of fraud under forfeiture statute is conduct or making of false or misleading statement with intent to deceive." 23 CL. Ct. 87
And In: U.S. v. Dinerstein "Public contracts - Fraud." 361 F.2d 852

And In: James D. Murphy v. Cinn. Ins. Co.
"Michigan recognizes contractual obligation on part of insured to act in good faith." 772 F.2d 273

And In: Newsome v. Stacid "Deprived of under color of law." 580 F.Supp 507

And In: Milner v. National School of Health Technology
"Conspiratorial civil rights statute covers federal rights which are entitled to protection against anyone, rather than merely protection for impairment by a state." 42 USCA 1985 409 F.Supp 1389

Where Petitioner was not advised prior to filing claim of tort law on legal fees and fees to be part of damages claim and as claim amount was based solely on good faith compromise, and where

Petitioner's monies is also his property, And where Petitioner could not have known or foreseen bad faith actions by U.S. Government, nor foresee need for attorney and as Petitioner was prevented legal and equal representation due to unreasonably low fee limit under tort law thus;

Plaintiff was double trapped - either no representation or not be made whole, both under color of law.

Petitioner was violated by:
Article 1 Sect 9: No Bill of Attainder
plus breach of:
Amends 4, 5, 9, 10 & 14 plus
5 RCL 604, 28 USC 1342, 42 USC 1983

Courts have responded unkindly as

In: Sayre v. U.S.
"Negligence in conduct of government activities is circumstances like unto those in which private person would be liable." 282 F.Supp 175

Also In: Commerce Oil Refining Corp. v. Miner
"The Supreme Court held that injuries properly includes injuries resulting form the invasion of rights that inhere in an individual by reason of his being a person in the eyes of the law." 10 ALR 3rd 525

And In: Cline v. U.S.
"Negligence" 214 F.Supp 66

Where attorney could not be secured Petitioner was forced to consult and rely on several local magistrates then as instructed filed suit in local court against driver seeking inflation and costs - $1,003.00.

Where Respondent in Oct 1992 replaced driver as Defendant and removed case to U.S. District Court CV 92 - 5421

Respondent did not offer restitution and directly disobeyed court order to answer in 60 days. [App-5]

Court's bias in acceptance of Respondent's direct disobeying of court order and breaking of FRCP Rules 8 and 9, 12, 55 and 60 plus court's support of Respondent's pursuit of FRCP Rule 12 and failure to have Respondent answer claims magnified administrative legal manipulation, oppression and entrapment.

Petitioner, in turmoil and duress filed response Feb 25, 1993 for jury trial under 28 USCA 1346, 2678 and 2679.

Courts have stated judicial justice to be fair! Note:

In: N.L.R.B. v. Pie Nationwide Insur. "Principles of equitable jurisprudence are not suspended because government agency is Plaintiff." 894 F.2d 887

And In: Reiner v. State of N.J. "Jury trial in federal system cannot be abridged by administrative concerns."732 F.Supp 530

Also In: Bower v. Bunker Hill Co. "Strong federal policy favoring jury trial provides impetus for finding right to jury trial in questionable cases." 675 F.Supp 1254

And In: Curtis v. Loether "Jury must be available if action involves rights and remedies enforceable in action at law." 415 US 189 94 S.Ct. 1005

Petitioner pro se on April 19, 1993 filed for Default of Court's Order October 23, 1992 that U.S. had 60 days to answer Complaint; [App-5] which included:

Response to Dismiss Motion. Based on U.S. substituting self as Defendant, was after service on original Defendant was made and removing case to Federal on own merits received service and was served.
Also included statement of facts of case.

Demand for jury denied plus representation prevented and claim denied plus as all proper parties were served the same response plus to continue Petitioner noted would comply on service by sending Complaint copies to all parties,
Petitioner was unnecessarily injured by collusive administrative entrapment.

Petitioner filed for reconsideration June 16, 1993 and noted was:
A) Order of Oct 23, 1992 stating Defendant had 60 days to answer Complaint
B) Petitioner was awaiting Respondent to answer claim.
C) As original Defendant was served under local court instructions, Petitioner was under premise Defendant had been served

As question of value and values of right and jury denied, plus injured by broken agreement plus administrative entrapment and ongoing coercion under color of law plus where Petitioner by entrapment and tort law was prevented legal representation and where court's bias refused to have Respondent answer claims as made,
In denying being made whole all ethics consistency being violated plus all inclusive and following uses of laws and actions were in themselves violations denying or compromising rights under color of law and fraudulent Petitioner was directly violated by:

Preamble: Insure domestic tranquility, and justice plus Art 1 Sect. 9 plus breaches of Const. amends: 1, 4, 5, 7, 9, 10 & 14 plus violated FRCP Rules 8, 9, 12 & 28 also violated 9 USCS 10, 28 USC 1342, 1343 & 1346 also violated 28 USCS 2071 & 2075 plus 41 USCA 106 and 42 USC 1983

If service can be corrected to continue in State court is justice not able to be served same in Federal court or biased for government's purpose?

In: Weinberg v. Colonial Williamsburg Inc. "Removed action will not be dismissed on ground that original service of process in state court is defective since service of new process under 28 USCS 1448 may be authorized" 215 F.Supp 633 6FR Serv2d 110

As Petitioner was prevented from making finish repairs that relied on initial major repairs being made by Respondent as promised and as such repairs by Respondent were not made newly unaware of and unknown increased damage ensued preventing state inspection and loss of property at years end 1993.

Loss of attachment would not have occurred had Respondent acted in good faith with Administrative Claim and acted in good faith in lower court action. Respondent's suppression and not making repairs as agreed and intentional entrapment usage of FRCP 12 resulting in unforeseen lapsing of time and unforeseen bad faith caused added and ensuing damages plus loss of Petitioner's attachment and monies.

Petitioner Feb 29, 1994 filed on new grounds and added damages through attorney in Dist. Court 94 CV 1361 under 28 USC 1332, 1339 and 1402 seeking jury trial, damages, fees, costs and fair relief.

Respondent refused to negotiate: fees, monetary losses, loss of property and attachment, and refused to pay costs yet issued Oct 12, 1994 stipulation for settlement to be as original Administrative Claim they had aborted prior to court actions [App-4] denying fair relief and preventing Petitioner from being made whole.

Petitioner was notified of hearing and advised of government threat "that government will have case thrown out if not accepted 'as is.'

As jury was denied and presiding judge would be the same as prior action combined with threat by government did remove Petitioner's trust in the court, government and attorney that trapped, disoriented, in turmoil and under duress Petitioner could not continue in collusive and coercive abridging of rights.

In prior cases courts have not agreed with this use of force and coercion as: In: Lewis V. S.S. Baune "Settlement through duress, harassment or overbearing conduct has no right." 534 F.2d 1113

And In: Reiner v. State of N.J. "Jury trial in Federal Systems cannot be abridged by administrative concerns." 732 F.Supp 530

Also In: Sequros Banneney S.A.V. v. S/S Oliver Dorescher "Courts equity powers may not be exercised in such manner as to deprive a person of statutorily protected rights." 761 F.2d 855

And In: Davis v. Merv Griffin Co. "Action which seeks recovery of money judgement is action at law for purpose or right to jury trial.: 128 BR 78

Also In: Bower v. Bunker Hill "Right of jury trial in questionable cases." 675 F.Supp 1254

Petitioner filed pro se Oct 19, 1995 in U.S. Dist. Court 95 CV 6670 for jury trial seeking relief under "Preamble" and the Const. Art 3 Sect 2 and Art 6 Sect 2 plus violations of Amends: 4, 7 & 14 plus 42 USCS 1983 and 28 USC 2255.

As Respondent neither denied nor answered claims as presented and court did not require Respondent to answer claims plus evidence and facts were not discussed and jury denied.
Court's biased inaction of Art 6 Sect 2 and FRCP Rules 9, 38 and 60B while through its order reducing civil action to [App-2] Administrative Claim originally aborted by Respondent suggests collusion and borders extortion as did compromise Petitioner's fairness under 28 USC 2071, 2075, and violated 28 USC 2412 and 2674.

Such following opinions must be considered on ethics of fairness:

In: U.S. v. Yellow Cab Co.
"Provisions of the FTCA are to be liberally construed." 71 S.Ct. 399

In: U.S. v. Russell Elec. Co.
"In seeking money damages for breach of contract government stands as would any other party." 250 F.Supp 2

In: Kirby v. Chrysler Corp.
"In appropriate breach of contract case Plaintiff may recover as damages expenditures made in attempt to avoid losses even where those expenditures may have increased those losses."
544 F.Supp 743

In: Davis v. Merv Griffin
"Prevailing party in any action versus U.S. will have judgement for costs 28 USC 2412." 128 BR 78

And In: Weaver v. O'Grady
"Any federal constitutional claim arising under 1983 of Title 42 without regard to amount and section applies to property rights." 350 F.Supp 403

In: Heileman Brewing Co. v. Joseph Oat Corp. "Federal courts may not coerce settlements." 871 F.2d 648

Quoting partial phrase from Respondent's memorandum as the courts order [App-2-] and whereas the complete statement was untrue and misleading combined with courts refusal to have Respondent answer claims as made did compromise the Petitioner's protection and fairness of court and breached Const. Amends. 1, 4, 5, 7, 9, 10 & 14 plus 9 USCS 10, 28 USC 1342, 1343, 1346 & 2255.

Such procedures within ethics and Constitution must be questioned. Petitioner cites the following:

In: Manchester Insur. and Indem. Co. v. Storm
"Vexatious conduct or false statements."
122 App 2nd 183 258 NE 2d 150

In: Automobile Insur. Co. v. U.S.
"Court cannot be party to rubber stamping." 10 F.R.D. 489

In: Caputo v. Nat. Assn. Letter Carriers
"Equitable remedy in addition to damages."
730 F.Supp 1221

In: Bryson v. Phelps "Where action was in tort and there was proof of injury to the person or estates of the Plaintiff, damages for mental and anguish growing out of the wrong were recoverable."
23 Ala. App 346 125 So 795 Cert Den

In: U.S. v. Davis
"U.S. to be liable as a private individual under like circumstances." 890 F.2d

In: Ricker v. U.S. "Fundamental rights of due process." 434 F.Supp 1251

Petitioner in U.S. Court of Appeals filed pro se CV 96-1135 that order of Jan 24, 1996 ordering amount of original Administrative Claim and extracting and quoting partial statement of government's memorandum which was false and also misleading as basis for the order was unfair, suppressive and collusive. [App-2]

Petitioner's motions for Expand Record, Explanation of Order and Stay for consideration of misleading statements were denied [App-3] and Petitioner's request for rehearing in banc also denied.

Court opinions strongly contend as:

In: Kucel v. Walter E. Heller "Even when agreement exits accord is not binding if party enters it under fraud, compulsion or mistake of fact." 813 F.2d 67

And In: Schwartz v. Novo Indus. "Proponents of settlement have burden of demonstrating settlement is not collusive." ALS 119 FRD 359

Also In: Mahr v. Zapata Corp. "District Court must reject a settlement agreement no matter how acceptable if not free from collusion or fraud." 714 F.2d 436

Petitioner Oct 25, 1996 filed pro se 96 CV 7436 on added and new damages for violations of Amends: 4, 5, 9, 10 & 14 plus 28 USC 1343 and 2412 and 42 USC 1983.

Jury denied - court did not require Respondent to answer claims as presented and dismissed complaint [App-1]

Respondent claimed immunity yet immunity had been waived by acting on original claim and from action with attorney continuity has not stopped.

SUMMARY

Where as:

A) Petitioner could not have known reasonable and good faith compromising and agreement would be unethically broken and
B) Petitioner could not have foreseen government's breaking promise and
C) Could not have foreseen Petitioner's entrapment and Respondent maintaining such course; [App-2] and
D) Petitioner could not have foreseen being ensnared by not being advised and not knowing of tort law minimal fee limitations nor know rule requiring amount to be taken from settlement [App-4] and

E) Petitioner could not have foreseen court's bias to denying citizen pro se Petitioner rights of protection under Preamble and Constitution in court's order through Respondent's memorandum of law statement: "the United States has been and continues to be ready and willing to pay the full amount of Kornafel's Administrative Claim" and

where such statement is which the court quoted and based the order and,

as all prior actions and motions were recorded in same court and,
such false and misleading statement was mandated by same court, and,

such court action maintained can only be judicial usurpation of power as containing bias, suppression, entrapment and discharging of legal influence under color of law, and

F) Having been unconstitutionally and ethically and unfairly denied being made whole, Petitioner cites the following on justice and ethics:

In: U.S. v. Kubrick "The act waives the immunity of the U.S. and that in construing the statute which is a condition of what waiver." 100 S.Ct. 353

And In: Mummelthee v. city of Macon City, IA "Section 1983 provides for vindication of right to equal protection under 14th Amend." 873 F.Supp 1293
Also In: DeRochement v. U.S. "Essence of fraud under forfeiture statute is conduct or making of false or misleading statement with intent to deceive." 23 CL.Ct. 87

And In: Talbot v. Seeman
"No claim can be maintained in a court of justice founded on an act in itself tortious." 2 L.Ed 15

Also In: Gibbs v. Consol. Gas Co.
"There can be no civil right where there can be no legal remedy and there can be no legal remedy for that which is illegal."
32 L.Ed. 979
And In: United States v. Temple
"As issue of fraud was not adjudicated in prior suit it was not adjudicated by the prior judgement." 147 F.Supp 118

And In: McDonald v. U.S.
"In order to have an effacious accord and satisfaction both parties must agree."
13 CL.Ct. 255

CONCLUSION

As relief cannot be obtained by Petitioner from any other Court nor in any other form and
Where the U.S. Court of appeals had sanctioned such a departure by a lower court and, where such order prevents full relief and denies Petitioner being made whole and
Where such order by denying accord and satisfaction is in itself a violation of conscription predicated on breach of contract, oppression under color of law and fraud and as

Such order and procedures conflict with other decisions, such exceptional circumstances warrant the exercise of the courts discretionary powers thus the granting of the Writ will be in aid of this court's appellate jurisdiction.

Petitioner respectfully asks court to issue Extraordinary Writ to review actions of government, district Court and tort law and;

Under Art 1 Sect 8, Art 3 Sect 2 and Art 6 Clause 2 should remand for proper court mandamus to require accord and satisfaction for Petitioner from government's negligence, bad faith, suppression and oppression under color of law and for the providing of full relief.

Respectfully submitted,

Jul 5 1997

Stanley E. Kornafel, Pro Se
668 Mohawk Avenue
Norwood, PA 19074

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STANLEY E. KORNAFEL	:CIVIL ACTION
v.	:
UNITED STATES GOVERNMENT	:
UNITED STATES OF AMERICA,etal	: No. 96-7436

O R D E R

AND NOW, this 26 day of February, 1997, upon consideration of defendants' motion to dismiss the complaint and plaintiff's response thereto, it is hereby ORDERED that defendants' motion is GRANTED and plaintiff's complaint is DISMISSED.

Plaintiff's claims are barred by the doctrine of res judicata; plaintiff's tort claims are barred by the statute of limitations; and plaintiff's constitutional tort claims are barred by the doctrine of sovereign immunity. Defendants cannot be sued under 42 U.S.C. 1983.

THOMAS N. O'NEILL, JR., J.

ENTERED: 2-27-97

CLERK OF COURT

Jan 24 1996 Filed

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STANLEY E. KORNAFEL	:	CIVIL ACTION
Plaintiff,	:	NO. 95-6670
v.	:	
U.S. GOVERNMENT	:	
U.S. OF AMERICA	:	
Defendant	:	

ORDER

AND NOW, this 23 day of Jan, 1995, upon consideration of the Motion to Dismiss Plaintiff's Complaint filed by defendant, the United States, and Plaintiff's response thereto, it is hereby

ORDERED

that defendant's Motion for Dismissal is GRANTED, and plaintiff's complaint is dismissed
"for the reasons set forth in the government's memorandum upon the representation by the government that it will pay plaintiff the full amount of the property damage claimed by plaintiff on his administrative claim form."

THOMAS N. O'NEILL, JR., J.

ENTERED: JAN 24 1996

CLERK OF COURT

July 16, 1996

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 96-1135

Re: KORNAFEL v. U.S. GOVT., et al.

PRESENT: GREENBERG, SCIRICA and SAROKIN,
Circuit Judges

1. Motion of Stanley E. Kornafel, Appellant, for Stay of Order for Consideration of Omitted and Incomplete Statements.
2. For your information: A Judgement Order was entered June 21, 1996 in this appeal. An order was entered July 16, 1996 denying a motion for clarification by the appellant.
3. Pursuant to conversation with Judith Dean, U.S. Attorney this date, she does not plan to respond to the above motion, unless the court should so direct.

_____

Barbara Jacobson
Deputy Clerk-Direct Dial 597-8465

_____ O R D E R _____

The foregoing Motion is denied.

By the Court,

_____

Circuit Judge

Dated: Jul 30, 1996
JM/cc:SEK
JND

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STANLEY E. KORNAFEL,	:	CIVIL ACTION
Plaintiff,	:	NO. 94-1361
v.	:	
UNITED STATES POSTAL	:	
SERVICE and UNITED STATES:		
Defendants	:	

STIPULATION FOR COMPROMISE SETTLEMENT

"5. It is also agreed, by and amount the parties, that the settlement amount of Nine Hundred Seventy-Five Dollars ($975.00) represents the entire amount of the compromise settlement and that the respective parties will each bear their own costs, fees, and expenses and that any attorneys fees owed by the plaintiff will be paid out of the settlement amount and not in addition thereto.

6. It is also understood by and among the parties that pursuant to Title 28, United States Code, Section 2678, attorneys fees for services rendered in connection with this action shall not exceed 25 per centum of the amount of the compromise settlement."

DATED: OCT. 12, 1994

[Petitioner is quoting paragraphs 5 and 6 only as original stipulation is 4 pages long.]

Filed Oct 23, 1992

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STANLEY E. KORNAFEL, Plaintiff,	:	CIVIL ACTION NO. 92-5421
v.	:	
UNITED STATES OF AMERICA, Defendant.	:	

O R D E R

After careful consideration of the United States' motion, which is not opposed, it is hereby ORDERED that the claims against John P. Iacono, is DISMISSED, and the United States is substituted as the sole defendant.

The United States shall have 60 days to answer this complaint, pursuant to Rule 12 of the Federal Rules of Civil Procedure.

BY THE COURT:

_____
10/23/92

ENTERED: 10/26/92
CLERK OF COURT

POSTAL DATA CENTER
San Mateo, Ca 94497-9000

May 11, 1992

Certified: P 690 435 528
Return Receipt Requested

MR STANLEY E KORNAFEL
668 MOHAWK AVENUE
NORWOOD PA 19074-1125

Dear Mr. Kornafel:

We acknowledge receipt of your May 5, 1992 letter appealing our decision to amicably settle your claim for $400.00. Since you have expressed dissatisfaction with our offer and reject it "without reservation", we have no alternative but to rescind it and deny your claim.

Regulations require us to inform you that if you are dissatisfied with this final action on your claim, you may file suit against the United States of American in an appropriate United States District Court not later than six months from the date of mailing of this letter, which is the date shown above.

Inquiries may be directed to Skip Lee at (415) 377-1389.

Sincerely,

William P. Keyes
Tort Claim Supervisor
Accounting Division
San Mateo Postal Data Center

STANLEY E. KORNAFEL

May 5, 1992

Mr. Joe Neal, General Mgr.
Accounting Division, Tort Claims Unit
San Mateo Postal Data Center
San Mateo, CA 94497-900

REF: Accident Date: 3/11/92
CASE: #91-57C

Dear Mr. Neal,

As per your request for decision per your letter dated 4/28/92, this is to reject your final offer without reservation.

Also, as per instructions of Paragraph 5, this is also a request for reconsideration.

Your statement of the $400.00 as being more than generous is taken as authority so I would welcome your replacing my vehicle with another of similar value by either Nissan or Mitsubishi manufacture.

My 1971 Datsun is used daily for business performance and is therefore necessarily maintained.

Your organization should consider the following:
Your PDA total loss evaluation shows mileage of 201,354, the odometer of this vehicle showed 20,354.

The engine, starter and radiator have been rebuilt and the following have been replaced: Carburetor - New
Coil - New
Wire - New
Alternator - New
Distributor - New
Struts/Shocks - New
Front Suspension, Linkage & Connecting Rods - New
Along with current state inspection and necessary car of parts.

A copy of this letter will be forwarded to Richard M. Heller, Esq. for his perusal and if suit in court be necessary, so be it.

Sincerely,

Stanley E. Kornafel